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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,227	08/13/2001	Stephen F. Gass	SDT 304	8817
27630	7590	10/04/2005	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER

3724

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/929,227

Applicant(s)

GASS ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7,9-12,19 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,9-12 and 21-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,19 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/24/05;6/4/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: 1449's-2/27/05.

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 6/22/05, wherein claims 1, 9-10, 19, 23-27, and 30 were amended; and claim 31 was added. It should be noted that the double patenting rejections have been reviewed and updated in light of applicant's amendments in the instant applicant as well as applicant's co-pending applications, abandonments and by applicant's arguments.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 19 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 17, and 19-28 of copending Application No. 10/100,211 in view of Friemann et al.

Claims 1, 17, and 19-28 of copending application '211 discloses the invention substantially as claimed except for the actuator being able to brake the cutting tool within approximately 3 milliseconds upon detection of contact between the user and the blade. However, Friemann et al. discloses that it is old and well known in the art to

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actuate braking of a cutting tool as fast as possible and more specifically 5 milliseconds for the purpose of preventing injury to the user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have claimed that the actuator of instant application is actuated to brake the cutting tool as fast as possible and at least within 5 milliseconds. As to the specific 3 milliseconds, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a 3 millisecond stopping time in order to increase the ability of the claimed device to prevent accidents because it is taught by Friemann et al. that the stopping time should be as quick as possible and because it has been held that discovering an optimum value involves only routine skill in the art as well as wherein the generally conditions of the claims are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Therefore, increasing the speed at which the blade is braked from 5 milliseconds to 3 milliseconds does not serve to define a patentable device over the claims of '211 and Friemann et al. without unexpected results and in this case increasing the speed at which the blade is braked does not have unexpected results.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, 19 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda, U.S. Patent 4,117,752, in view of Andreasson, U.S. patent 4,653,189, and Friemann et al., U.S. Patent 3,858,095.

Yoneda discloses the invention substantially as claimed, including an actuator having stored energy sufficient to move the brake component (a capacitor that is charged to discharge to power the brake). Yoneda lacks the specific actuator for being able to brake the cutting tool within approximately 3 milliseconds or less. However, Friemann et al. discloses that it is old and well known in the art to actuate braking of a cutting tool as fast as possible and more specifically within 5 milliseconds for the purpose of prevent injury to the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the brake of Yoneda capable of actuation within 5 milliseconds in order to prevent injury to the user.

As to the specific 3 milliseconds, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a 3 millisecond instead of 5 milliseconds in order to increase the ability of the device to prevent accidents because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

In the alternative, even if it is argued that Yoneda lacks the stored energy capacitor, Andreasson discloses that it is old and well known in the art to use stored energy braking mechanisms, that is, electromechanical brakes with charged capacitors, for the purpose of providing an improved safety device on a cutting tool. Therefore, it

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would have been obvious to one of ordinary skill in the art at the time of the invention was made to use stored energy with the braking mechanism of the device of Yoneda in order to provide an efficient, economical braking mechanism, as taught by Andreasson.

6. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda, in view of Andreasson and Friemann et al. as applied to claim 1 above, and further in view of Baur, U.S. Patent 3,695,116, and Bielinski, U.S. Patent 5,606,889.

The modified device of Yoneda discloses the invention substantially as claimed except for that the actuator includes a electromechanical but is silent as to the type of electromechanical device and therefore, it lacks an actuator with a spring, wherein a removably housing is coupled to the frame and housing the spring and brake.

Baur discloses that it is old and well known in the art to replace electro-mechanical devices with spring loaded actuators that are electrically responsive by tensioned wires for the purpose of providing fast acting, less expensive, and smaller devices that providing large mechanical forces.

Bielinski discloses that it is old and well known in the art to use spring loaded actuators that use fusible members are contained in replaceable/removable cartridges for the purpose of facilitating efficiency of the operation of the device thereby allowing the user to quickly and easily replace used cartridges with new ones.

Furthermore, the examiner takes official notice that it is old and well known in the art to use to replace brakes and spring when they are worn out or before they are worn out for the purpose of maintaining the effectiveness of the brake system of the cutting tool such that the user is protected.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to a removable housing comprising springs, brakes, and fusible members that enable actuation of a braking mechanism by a spring actuator in order to provide a fast acting, less expensive, smaller actuator that facilitates efficiency of the operation as taught by Baur and Bielinski, and such that the effectiveness of the braking system is maintained.

7. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoneda, U.S. Patent 4,117,752 in view of Friemann et al., U.S. Patent 3,858,095.

Yoneda discloses the invention substantially as claimed, including, e.g., a cutting tool (14); a means for driving the cutting tool (10); means for detecting contact between a person and the tool (see column 1, lines 55-65); a brake component spaced apart from the tool (20); and means for moving the brake (b1, see column 2, lines 30-40). However, Yoneda lacks the specific braking within 3 milliseconds or less. Friemann et al. discloses that it is old and well known in the art to actuate braking of a cutting tool as fast as possible and more specifically within 5 milliseconds for the purpose of prevent injury to the user.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the brake of Yoneda capable of actuation within 5 milliseconds in order to prevent injury to the user.

As to the specific 3 milliseconds, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a 3 millisecond instead of 5 milliseconds in order to increase the ability of the device to prevent accidents

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because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Amendment

8. The Declaration under 37 CFR 1.132 filed 6/22/05 is insufficient to overcome the rejection of claims 1, 3-4, 19, and 31 based upon the above rejections as set forth in the last and current Office action because of enablement. The remarks by the applicant in the 1.132 declaration and the argument section of the cutting response are similar and therefore, the examiner will not repeat those rebuttals.

It appears that the declaration is based upon the opinion of Dr. David A. Turcic. There appears to be only Dr. Turcic's opinion on how the device of Friemanns works without any physical tests. The declaration provides no nexus to the instant claims with respect to structure that allows the instant claims to function as alleged. It is well settled that one of many requirements for suggestion a reference is inoperative requires that the instant application's specification and CLAIMS must include features which distinguish the claimed subject matter from the inoperative prior art. In this case, applicant does not, there is no structure in the instant claims that allow the brake mechanism to function in 10, 7, 5 or less than 5 milliseconds. The instant claims are merely functional/intended use recitations.

It appears that the majority of Dr. Turcic's analysis is based upon the presumption, see paragraph 10, that the relays in Friemann are standard relays and that such standard relays "conservatively take 5 to 15 milliseconds or more to operate". However, it should be noted that there is no proof that the relays in Friemann are the

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same relays as alleged by Dr. Turcic. Moreover, a quick patent search for relays in the same time period resulted in numerous patents disclosing relays operating within one millisecond. See Marston, Chow, Gluck, Mason, Mcwhirter, and Baker all cited herewith.

Dr. Turcic's current declaration and Dr. Gass's previous declaration both attest to their knowledge and opinions of the art and that they person do not know of any structural at this time which is capable of the brake speeds of Friemann. However, this in and of itself is not proof that the structure did not exist.

Response to Arguments

9. Applicant's arguments filed 6/8/05 have been fully considered but they are not persuasive.

Applicant's comments regarding the rejection are similar to the comments in Dr. Turcic's declaration and will not be further discussed here. The inoperability of the Friemann reference has already been discussed.

Applicant contends that the prior art lacks the specific structure/characteristic of the actuator for facilitating braking within 3 milliseconds. However, the examiner disagrees for the following reasons. The instant claims do not set forth any specific structure capable of facilitating braking within 3 milliseconds. Therefore, there is insufficient structure to support this functional recitation in such way it defines itself over the prior art. The currently claim phrases are merely functional/intended use states without any significant structure to allow for 3 millisecond braking.

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10. For the reasons above, the grounds of rejection are deemed proper.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

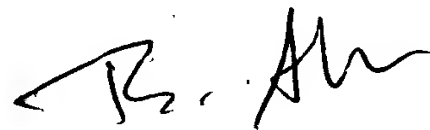
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
September 18, 2005